ALASKA STATE LEGISLATURE HOUSE RESOURCES STANDING COMMITTEE

March 31, 2021 1:01 p.m.

MEMBERS PRESENT

Representative Josiah Patkotak, Chair
Representative Grier Hopkins, Vice Chair
Representative Zack Fields
Representative Calvin Schrage
Representative Sara Hannan
Representative George Rauscher
Representative Mike Cronk
Representative Ronald Gillham
Representative Tom McKay

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 26

"An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 10

"An Act relating to the Funter Bay marine park unit of the state park system; relating to protection of the social and historical significance of the Unangax cemetery located in Funter Bay; providing for the amendment of the management plan for the Funter Bay marine park unit; and providing for an effective date."

- MOVED HB 10 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 26

SHORT TITLE: CONFLICT OF INTEREST: BD FISHERIES/GAME

SPONSOR(s): FISHERIES

02/18/21 (H) PREFILE RELEASED 1/8/21

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02/25/21	(H)	MEETING CANCELED
03/12/21	(H)	BILL REPRINTED
03/16/21		
03/16/21	(H)	
03/16/21	(H)	MINUTE (FSH)
03/18/21	(H)	FSH AT 11:00 AM GRUENBERG 120
03/18/21	(H)	
03/18/21	(H)	MINUTE (FSH)
03/20/21	(H)	FSH RPT 5DP 1DNP 1NR
03/20/21	(H)	DP: STORY, STUTES, ORTIZ, KREISS-
		TOMKINS, TARR
03/20/21	(H)	DNP: MCCABE
03/20/21	(H)	NR: VANCE
03/31/21	(H)	RES AT 1:00 PM BARNES 124
BILL: HB 10		
SHORT TITLE:	FUNTER BA	Y MARINE PARK: UNANGAN CEMETERY
SPONSOR(s): H	HANNAN	
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WITNESS REGISTER

REPRESENTATIVE GERAN TARR

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Introduced HB 26 on behalf of the House Special Committee on Fisheries, sponsor.

THATCHER BROUWER, Staff

Representative Geran Tarr

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 26 on behalf of Representative Tarr, who chairs the House Special Committee on Fisheries, sponsor.

GLENN HAIGHT, Executive Director II

Board of Fisheries

Boards Support Section

Alaska Department of Fish & Game

Juneau, Alaska

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 26.

FRANCES LEACH, Executive Director

United Fishermen of Alaska

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 26.

MARK RICHARDS, Executive Director

Resident Hunters of Alaska

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 26.

NOAH KLEIN, Attorney

Legislative Legal Services

Juneau, Alaska

POSITION STATEMENT: Answered questions and provided information during the hearing on HB 26.

JAMES MOORE

Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 26.

BEN MOHR, Executive Director

Kenai River Sportfishing Association (KRSA)

Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to HB 26.

MALCOLM MILNE, Executive Director

North Pacific Fisheries Association (NPFA)

Homer, Alaska

POSITION STATEMENT: Testified in support of HB 26.

MATTHEW DONOHOE, President

Alaska Trollers Association

Sitka, Alaska

POSITION STATEMENT: Testified in support of HB 26.

SUSAN DOHERTY, Executive Director

Southeast Alaska Seiners Association

Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 26.

DON JOHNSON

Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to HB 26.

CHERYL BROOKING, Senior Assistant Attorney General

Natural Resources Section

Civil Division (Anchorage)

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Provided information and answered questions

during the hearing on HB 26.

ACTION NARRATIVE

1:01:39 PM

CHAIR JOSIAH PATKOTAK called the House Resources Standing Committee meeting to order at 1:01 p.m. Representatives McKay, Fields, Cronk, Schrage, Gillham, Hannon, Hopkins, and Patkotak were present at the call to order. Representative Rauscher arrived as the meeting was in progress.

HB 26-CONFLICT OF INTEREST: BD FISHERIES/GAME

1:02:44 PM

CHAIR PATKOTAK announced that the first order of business would be HOUSE BILL NO. 26, "An Act relating to participation in matters before the Board of Fisheries and the Board of Game by the members of the respective boards; and providing for an effective date."

1:02:58 PM

REPRESENTATIVE GERAN TARR, Alaska State Legislature, gave a brief history of HB 26 on behalf of the House Special Committee on Fisheries, sponsor. She said that it was a House Special Committee Fisheries bill previously introduced on Representative Louise Stutes and that this is the third time this legislation has been brought forth, having passed the House during the Thirty-First Alaska State Legislature before its progress was interrupted by the COVID-19 mitigation measures. She noted that many of the issues previously raised have been addressed, and that this is a committee bill that has the support of all members of the House Special Committee on Fisheries.

1:04:25 PM

THATCHER BROUWER, Staff, Representative Geran Tarr, Alaska State Legislature, began by directing attention to items in the committee packet, including a document prepared by Representative Stutes containing background information on the Board of Fisheries (BOF) and Board of Game (BOG), and information prepared by Glenn Haight, the Executive Director of the Board of Fisheries, detailing the recusal process and providing information on the number of times board members have declared a conflict of interest.

MR. BROUWER said that HB 26 would change the way BOF support BOG function by "allowing the members to deliberate on subjects in which they have a declared personal or financial interest, as defined by the Legislative Ethics Act." Currently, he said, members are required to divulge a conflict of interest if they or their immediate family members are involved in the subject on which the board is deliberating. He offered the definition of "immediate family members" as defined under AS 39.52.960, which read as follows:

- (11) "immediate family member" means
- (A) the spouse of the person;
- (B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;
- (C) a child, including a stepchild and an adopted child, of the person;
- (D) a parent, sibling, grandparent, aunt, or uncle of the person; and
 - (E) a parent or sibling of the person's spouse;

MR. BROUWER said Title 39 currently prohibits a public officer, including a BOF member from taking or withholding official action in order to affect a matter in which the member has a personal or financial interest. He explained that official action includes advice, participation, and assistance.

MR. BROUWER said the Ethics Act defines "financial interest" [under AS 39.52.960] as follows:

- (9) "financial interest" means
- (A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;
- (B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management;

MR. BROUWER noted that the Act defines stock ownership in a business to be significant if valued greater than \$5,000. He stated that "personal interest" is defined [under AS 39.52.960], as follows:

(18) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

MR. BROUWER commented that, as members of BOF and BOG are selected for their diversity of interest, HB 26 would promote the sharing of knowledge among members by clarifying that are allowed to "lend their expertise" during members deliberation, but they would not be allowed to vote on the issue. He explained that this would "allow members to make sound management decisions with all available information." remarked that a board member who has a permit or guide license, or has a relative with such a license, could be "the only person on the board who understands the nuances of the proposal being discussed." He noted that during the 2017-2018 Board of Fisheries meeting cycle a member was recused from 54 proposals representing 22 percent of the total proposals.

1:09:22 PM

CHAIR PATKOTAK asked for more information on the number of recusals.

MR. BROUWER clarified that out of 244 proposals, board member(s) had to be recused 54 times, and recusals are more common on the Board of Fisheries.

1:10:12 PM

MR. BROUWER covered the Sectional Analysis, which read as follows [original punctuation provided]:

Section One

Section one amends AS 39.52.220(b), to allow a Board of Game or Board of Fisheries members to take official action, defined by section three of the bill, as deliberating but not voting, on a matter that they have a personal or financial interest in.

Section Two

Section two amends AS 39.52.220(a) to exempt Board of Fisheries and Board of Game members from the provision in the Executive Branch Ethics Act that prevents them from deliberating on matters, they have a personal or financial interest in.

Section Three

Section three amends AS 39.52.220 by adding a new section that allows Board of Fisheries and Board of Game members with a personal or financial interest in a matter, to deliberate, but not vote, on that proposal or subject being considered by the board.

Section Four

Establishes an immediate effective date.

1:12:21 PM

GLENN HAIGHT, Executive Director II, Board of Fisheries, Boards Support Section, Alaska Department of Fish & Game (ADF&G),

provided information and answered questions on HB 26. explained that prior to each meeting the board members are asked to review the proposals and work with the board chair and the attorney general, so that when the meeting starts everyone understands what they'll recuse themselves from and why. attention to the document titled "Background Information on the Alaska Boards of Game and Fisheries Ethics Act Process" [included in the committee packet] which included the number of board member recusals compared to total proposals. He described examples of personal and financial conflicts of interest that significantly increase the percentage of proposals recused and explained that if a member is recused from a proposal they may stay during reports and public testimony but not participate in the deliberation of proposals. Under HB 26 the individual would be allowed to participate in deliberations and ask questions, but would not vote on a proposal.

1:17:51 PM

FRANCES LEACH, Executive Director, United Fishermen of Alaska, testified in support of HB 26. She said that members of BOF and BOG are chosen for their expertise in their region or fishery; however, they currently may not be allowed to participate in deliberations due to conflicts of interest. She noted that prior to her current position she worked with the Board of Fisheries as support staff, and she described board meetings in which a board member "conflicted out" of a proposal and couldn't participate in the deliberations while the remaining members "struggled to comprehend the nuances" of the issue and could have been assisted by the non-participating member. members to participate fully in deliberations, she said, builds a better record and makes for a more transparent discussion clearly established on the record. She said that HB 26 would also help the boards attract more qualified people, as members would not have to dedicate time to the board only to be forced into a non-participatory role. She emphasized that this bill would not allow conflicted members to vote, only to put their opinions on the record.

1:21:09 PM

REPRESENTATIVE FIELDS asked Ms. Leach whether she believes board members are under pressure to have off-the-record conversations with a conflicted member in order to get information.

MS. LEACH answered yes, then gave the example of a board meeting in which there was discussion of a subject in which one board

member had experience. She said that the board took an at-ease while a member went to the back of the room to ask the conflicted member questions on the subject.

1:22:21 PM

MARK RICHARDS, Executive Director, Resident Hunters of Alaska (RHAK), testified in support of HB 26. He said that he's attended BOF and BOG meetings for the past 15 years and has observed many instances in which a board member was recused, but in which he was certain that the issue had been discussed with the member in question. He stated his belief that HB 26 would not change the outcome of any proposals, as it's often the recused member who is the most knowledgeable in the subject matter. He said it would be beneficial to both the board and the public to have all deliberations open and on the record. He clarified that RHAK would not support allowing a conflicted member to vote on the issue.

1:25:18 PM

REPRESENTATIVE FIELDS asked how restrictive this rule would be compared to the rules of other boards and commissions.

1:26:06 PM

NOAH KLEIN, Attorney, Legislative Legal Services, indicated that he would research the question.

1:26:29 PM

REPRESENTATIVE SCHRAGE asked why this bill is aimed specifically at BOF and BOG.

MR. BROUWER replied that this bill addresses BOF and BOG because the issue of recusals exists within those boards.

REPRESENTATIVE SCHRAGE asked Mr. Brouwer to confirm whether he would be correct in saying that, because there is a higher occurrence of recusals in BOF and BOG, HB 26 is intended to affect those two boards.

MR. BROUWER replied that is his understanding.

REPRESENTATIVE TARR explained that the boards in question were created at statehood and include very general language regarding board membership. For example, she said, there is discussion of

representation but there are no requirements in statute, whereas other boards have specific requirements for membership.

REPRESENTATIVE SCHRAGE referred to language in Section 3 of HB 26, on page 3, lines 3-4, which would provide that if a member of BOF or BOG "discloses a personal or financial interest relating to the involvement of the member, or an immediate family member of that member, in a business or organization relating to fish or game resources, the member is not disqualified from deliberating or participating in the matter." He asked how well-defined "participating" is and if it could be construed to mean that the member could vote.

MR. BROUWER responded that HB 26 is drafted to make it clear that the members are allowed to deliberate but not to vote.

REPRESENTATIVE TARR referred to the continued language [of Section 3], page 3, beginning on line 4 through line 6, which read, "If the supervisor or a majority of the members of the respective board determine that the member's further involvement will result in a violation of AS 39.52.110-39.52.190, the board member may not vote on the matter." She indicated that this clarifies the intent of the legislation.

1:30:28 PM

REPRESENTATIVE RAUSCHER noted that he sees several letters of support from fishing organizations but not from hunting organizations. He asked if it's the fishing organizations asking for this legislation.

MR. BROUWER referred to the document titled "Background Information on the Alaska Boards of Game and Fisheries Ethics Act Process" [included in the committee packet] provided by Mr. Haight and said that while recusals do happen on the Board of Game, it's much more common on the Board of Fisheries.

1:31:48 PM

CHAIR PATKOTAK asked why the Board of Game is included in HB 26.

REPRESENTATIVE TARR said that BOF and BOG are addressed in statute in the same manner, so the Board of Game is included for consistency.

1:32:21 PM

REPRESENTATIVE HANNAN commented that the BOF and BOG "allocative decision makers", while other boards professional boards making recommendations. She said the State Board of Education is an example of one whose decision must then be carried out by 54 school districts. She suggested that BOF and BOG are much more like legislative bodies in that their decisions aren't filtered through different organizations. With respect to HB 26, she noted that a board member may be the only one who has expertise in a certain area and the other members need that knowledge. She noted the high number of Alaska residents who are intertwined in related areas and how common conflicts of interest are, and she opined that local knowledge should be used "to its fullest extent possible."

1:36:18 PM

REPRESENTATIVE CRONK said that a board member who has a conflict of interest can still have their expertise on the record by testifying as a member of the public. He opined that public trust is at an all-time low and said that he does not support HB 26 because it's not needed.

1:38:23 PM

REPRESENTATIVE GILLHAM said that the only support he has observed for HB 26 is from fishing organizations. He explained that even though he owned a fishing charter business, he represents all of the people of his district, and that he became a representative so he could decrease regulations; therefore, he does not support this bill.

1:39:41 PM

REPRESENTATIVE MCKAY said that he is a member of the Kenai River Sportfishing Association and sportfishermen "dominate" his district; he said that since they oppose this bill, he will be voting no.

1:40:08 PM

REPRESENTATIVE RAUSCHER said that he won't be supporting HB 26 due to many of the points already discussed.

1:41:19 PM

REPRESENTATIVE TARR said that she hopes the committee members will hear the public testimony and that the only organization

that has expressed opposition to HB 26 is the Kenai River Sportfishing Association, while there are multiple fishing organizations on record supporting it. She referred to Representative Cronk's comment about transparency and said that even in the Alaska State Legislature committee members are able to not only deliberate, but vote, in matters where a personal or financial conflict exists. She said that HB 26 is intended to allow for a more thorough conversation to exist on the public record.

1:43:12 PM

CHAIR PATKOTAK opened public testimony on HB 26.

1:43:38 PM

JAMES MOORE, testified in support of HB 26. He said that he has fished in Alaska for over 50 years and is appreciative of the Board of Fisheries process, and noted that Alaska's publicly vetted system provides more common sense and reality-based management than other states he has experience with. He said that he has served on the board of directors for several fishery organizations including the Alaska Trollers Organization and that he has experienced firsthand the benefit of a well-functioning board with the balanced perspective and solutions that come from the experience of all members working together. He said HB 26 addresses a weakness in the process by allowing full participation in the discussion by the members most familiar with the issues.

1:46:53 PM

BEN MOHR, Executive Director, Kenai River Sportfishing Association (KRSA), testified in opposition to HB 26. He said that the current procedures already allow members with a conflict of interest to participate in the board process as a general member of the public and explained the process of the testimony and deliberations phases. He opined that "allowing a conflicted individual to have influence over how allocations or regulations are interpreted or implemented, even if that influence isn't a final vote, is completely inappropriate" and that conflicted members already have a greater degree of influence over the general public than non-conflicted members.

1:50:28 PM

MALCOLM MILNE, Executive Director, North Pacific Fisheries Association (MPFA), testified in support of HB 26. He expressed his agreement with the statements made during invited testimony and said that HB 26 would support more informed management and would allow BOF and BOG to better serve the people of Alaska. He noted the letter of opposition from the KRFA and said that it's "almost inevitably the commercial fishermen" who have a conflict of interest, and he stated his belief in the importance of having informed discussion on the record.

1:53:13 PM

MATTHEW DONOHOE, President, Alaska Trollers Association, testified in support of HB 26. He said that he doesn't understand the opposition and that allowing a board member to comment on a proposal doesn't seem like a major change from how business is currently done. He opined that it's important for the board to hear from the commercial interests' point of view.

1:55:48 PM

SUSAN DOHERTY, Executive Director, Southeast Alaska Seiners Association, testified in support of HB 26. She stated that she has "witnessed firsthand how the most educated and experienced board members" have been left out of deliberations because of a conflict of interest and noted that HB 26 would not let conflicted members vote. She noted that in the next board cycle there will be contentious allocation. She described experiencing board members with minimal knowledge of an issue give inaccurate testimony, harming the process.

1:58:21 PM

DON JOHNSON stated his opposition to HB 26.

1:59:52 PM

CHAIR PATKOTAK, after ascertaining that no one else wished to testify, closed public testimony on HB 26.

2:00:06 PM

REPRESENTATIVE HANNAN asked Mr. Haight about the phrasing "personal or financial interest" and asked for examples of a board member being conflicted out due to personal interest which wasn't directly financial.

MR. HAIGHT responded by describing a situation in which a board member had a sibling who worked for an organization that had submitted a proposal. He also recalled an occasion during which the spouse of a board member testified on a proposal and the chairman ruled that the board member had a personal conflict; the member challenged the ruling, after which the board voted that the member be recused.

REPRESENTATIVE HANNAN noted comments saying that a conflicted board member could testify during the public testimony portion of a board meeting and asked Mr. Haight to describe that process.

MR. HAIGHT explained that the meetings consist of introductions, ethics disclosures, staff reports, public testimony, committees, and then deliberations. He said that if a member is recused, they would need to sign up for public testimony or participate in the committees as a member of the audience.

REPRESENTATIVE HANNAN asked whether it would be accurate to say that public testimony happens before any discussion of particulars.

MR. HAIGHT replied that public testimony comes early in the meeting, and that board members learn a lot in the public testimony and committee steps, which both happen prior to deliberations.

2:05:00 PM

REPRESENTATIVE RAUSCHER referred to the term "personal" on various pages of the text of HB 26 and wondered aloud whether anyone will be left on the boards to vote on the proposals, since there is no definition of "personal conflict".

MR. BROUWER reiterated the definition of "personal interest" from his introduction of HB 26 and said that based on this definition, whether a family member is part of an organization is the question.

2:07:23 PM

REPRESENTATIVE FIELDS asked about the last time the ethics guidelines were changed.

MR. HAIGHT said that he would follow up with an answer.

2:08:21 PM

REPRESENTATIVE HOPKINS noted that for a personal conflict to exist, the board member or a member of their immediate family must be part of an organization and he asked whether those entities would be conflicted out due to the personal conflict of interest.

MR. HAIGHT replied that he cannot recall anyone being a member of an organization while serving as a board member; he referred to his earlier notes on personal conflicts.

REPRESENTATIVE HOPKINS, in clarifying his original question, asked whether someone who advocates for fish or game harvest, but has no financial interest, would be conflicted out due to a personal interest conflict.

CHERYL BROOKING, Senior Assistant Attorney General, Natural Resources Section, Department of Law, replied that it would depend on the circumstances. If someone is simply a dues-paying member and gets e-mails, they may not be conflicted; however, if an individual is actively engaged in the organization and has taken a position on a proposal prior to the board meeting, they would have a conflict of interest and would be precluded from voting. She explained that the goal is for board members to not make up their minds on an issue until deliberations, after they've received and had the opportunity to understand the information presented on the proposal.

REPRESENTATIVE HOPKINS referred to Representative Cronk's note that there are "multiple opportunities for input" at the advisory committee level and asked whether board members could be forming an opinion well ahead of time, as they receive information.

MS. BROOKING replied that when a member is attending a meeting of an advisory committee they're listening and gaining insight on a subject; in their capacity as board member, however, a decision isn't to be reached until after deliberations. She clarified that board members are not also members of the advisory committees, but they do attend those meetings to learn about the issues.

REPRESENTATIVE HOPKINS opined that having all board members "on the same footing" when arriving at the meeting would be beneficial.

2:13:53 PM

REPRESENTATIVE CRONK stated his opinion that the issue of excessive recusals "really appears to be a Board of Fisheries problem that we're extending into the Board of Game" and that it should be addressed solely with the Board of Fisheries.

2:14:27 PM

CHAIR PATKOTAK announced that HB 26 was held over.

HB 10-FUNTER BAY MARINE PARK: UNANGAN CEMETERY

2:15:01 PM

CHAIR PATKOTAK announced that the final order of business would be HOUSE BILL NO. 10, "An Act relating to the Funter Bay marine park unit of the state park system; relating to protection of the social and historical significance of the Unangax cemetery located in Funter Bay; providing for the amendment of the management plan for the Funter Bay marine park unit; and providing for an effective date."

2:15:26 PM

REPRESENTATIVE CRONK thanked Representative Hannan for bringing HB 10 forward.

2:15:50 PM

REPRESENTATIVE MCKAY thanked Representative Hannan for bringing HB 10 forward.

2:16:03 PM

REPRESENTATIVE RAUSCHER noted his appreciation of HB 10.

2:17:01 PM

CHAIR PATKOTAK thanked Representative Hannan for furthering the learning opportunities of the committee members through discussions of HB 10.

2:17:22 PM

REPRESENTATIVE HANNAN thanked the committee members for their support and noted that while her name is on HB 10 as sponsor, it

was the families affected by the internment that made this legislation possible.

2:18:58 PM

REPRESENTATIVE HOPKING moved to report HB 10 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 10 was reported out of the House Resources Standing Committee.

2:19:41 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:20 p.m.